

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



75-1291

B  
PAS

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

X

-----  
UNITED STATES OF AMERICA

Appellee

Docket No. 75-1291

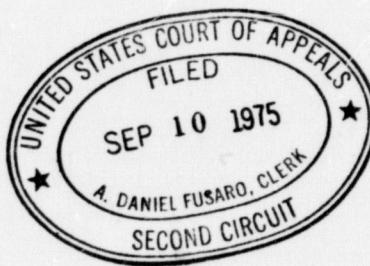
-against-

VIRGIL P. RIVERS, JR., and EDWARD T.  
COPELAND

Appellants

X

APPENDIX



JOHN C. CORBETT  
Attorney for Appellant  
EDWARD T. COPELAND  
Office & P.O. Address  
66 Court Street  
Brooklyn, New York 11201

**PAGINATION AS IN ORIGINAL COPY**

INDEX TO APPENDIX

	Page
Docket entries of District Court	1
Indictment	4
Government's Exhibit #7 in Evidence	7
District Court's Decision of September 19, 1974	12
District Court's Decision of June 5, 1975	13
Charge of Court	14

# APPEAL

74CR 515

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. VIRGIL P. RIVERS, JR. and EDWARD TERRANCE COPELAND	<i>For I. S.: AUSA LEVIN- Rivers; Court apptd Robert Corbett-Ruth</i>
	225 233 Broadway, NYC.
	x44-1602 267-4459
	<b>CLOSED</b> <i>Defendant: COPELAND Court apptd counsel: John C. Corbett 66 Court St., Bkl TR5-1975</i>
Bank Robbery and use of dangerous weapon	

### **Bank Robbery and use of dangerous weapon**

DATE	PROCEEDINGS
8-8-74	Before Neaher, J- Indictment filed.
8-16-74	By CATOGGIO, J - Order filed appointing counsel (deft Copeland)
8-16-74	By CATOGGIO, J - Order for acceptance of cash bail filed (Copeland)
8-16-74	Before NEAHER, J - Case called - defts present with counsels - Deft Copeland moves for reduction of bail - motion granted \$5,000 personal bond - 10% cash \$500. Deft to call the U.S.Attys. office once a week - deft Copeland arraigned and enters a plea of not guilty - Deft Rivers moves for reduction of bail - motion granted - \$10,000 personal recognizance bond - mother of deft to sign bond - deft to contact the U.S. Attys office once a week.
8-16-74	Deft arraigned and enters a plea of not guilty - both defts to appear before Judge Contantino on Sept. 10, 1974 for all purposes.
8-16-74	Notice of Readiness for Trial filed.

## 74CR 515

DATE	PROCEEDINGS
9-10-74	Before Costantino J - case called - deft Rivers & atty Mr. Robert Cantor present - case set down for trial on Oct. 29, 1974 at 10:00 am. Case as to deft Copeland set down for 9-13-74 at 10:00 am. Bail set at \$25,000 surety bond.
9-11-74	Notice of Appearance filed. (deft RIVERS JR)
9-11-74	Magistrate's files 74 M 1062 and 74 M 1139 inserted into CR file.
9-12-74	By Costantino J - Order releasing bail filed (Copeland)
9-13-74	Before COSTANTINO, J. - Case called - Set down for trial on 10-29-74 at 10: A.M.
9-20-74	By COSTANTINO, J. - Memorandum Decision filed that no "Bruton" problem exists, etc.
10-29-74	Before COSTANTINO J - case called - deft COPELAND & atty John Corbett present - trial adjd to Nov. 8, 1974 at 10:00 am - bail contd at \$25,000 surety bail. Deft RIVERS, JR & atty present - trial adjd to Nov. 10, 1974 at 10:00 am. Court relieves Mr. Robert Cantor as atty for deft - bail contd at \$25,000 surety bail - case set down for trial on Nov. 18, 1974 at 10:00 am.
10-30-74	By Costantino J - Order filed appointing counsel (Rivers)
10-30-74	Before Costantino J - case called & adjd to Nov. 18, 1974 for trial.
11-7/74	Voucher for compensation of counsel filed (RIVERS)
11-14-74	Magistrate's files 74 M 1220 and 1251 inserted into CR file.
11-18-74	Affidavit of JOHN C. CORBETT filed.
11-18-74	Before COSTANTINO J - case called - defts & attys present - trial adjd to Dec. 3, 1974.
12-9-74	Before Costantino J - case called - defts & attys present - case adjd to Jan. 20, 1975 for trial - motions for reductions of bail - bail set at \$25,000 and \$2,500 cash as to both defts.
12/13/74	By SCHIFFMAN, MAG. - <sup>Copy</sup> Order for acceptance of cash bail filed (COPELAND)
12-16-74	Affidavit of John Corbett filed
12-16-74	Before COSTANTINO J - case called - defts present - bail set at \$5,000 surety and \$500 cash as to each deft.
12-16-74	By CATOGGIO, J - Order for acceptance of cash bail filed (RIVERS) \$500 cash
-27-74	Magistrate's files 74 M 1748 and 1749 inserted into CR file.
-15-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (Copeland)
-15p75	By COSTANTINO J - Writ Issued, ret. Jan. 20, 1975 (Copeland)
-20-75	Before COSTANTINO J - case called - deft COPELAND & counsel John Corbett present - case adjd to 2-18-75 for trial.
-20-75	Writ retd and filed - Executed (Copeland)

3

74 CR 515  
CRIMINAL DOCKET

DATE	PROCEEDINGS
2/6/75	Before COSTANTINO, J. - Case called - Oral motion to exonerate bail motion granted (RIVERS)
2/6/75	By COSTANTINO, J. - Copy of order releasing bail filed (RIVERS)
2-18-75	Before COSTANTINO J - case called & adjd to Mar. 13, 1975 to set a trial date.
2/25/75	Petitions for writs of habeas corpus ad prosequendum filed (BO)
2/25/75	By COSTANTINO, J. - Writs issued, ret. 3/13/75 (BOTH DEFTS)
3/13/75	Before COSTANTINO, J. - Case called - Defts and counsel present - Ca down for trial on 5/12/75 at 10:00 A.M.
5-12-75	Before COSTANTINO J - case called - defts not present - adjd to 5-19-75 to set trial date.
5/13/75	Writs (2) retd and filed - executed
5-15-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (COPELAND)
5-15-75	By COSTANTINO J - Writ Issued, ret. May 16, 1975 (COPELAND)
5/16/75	Petition for writ of habeas corpus ad prosequendum filed (RIVERS)
5/16/75	By COSTANTINO, J. - Writ issued ret. 5/19/75
5/20/75	Writ retd and filed - executed
5/19/75	Before COSTANTINO, J. - Case called - Defts and counsel present - case to 6/9/75 at 10:00 A.M. for trial
5/20/75	Writ retd and filed - executed (COPELAND)
6-5-75	By COSTANTINO J - Memorandum and Order filed - the court has been furnished with a copy of 2 confessions of deft Rivers contained in a transcript of July 27, 1974. After comparing these confessions with confession of co-deft Copeland the Court holds that admitting into evidence Rivers' confessions would not violate US v. Bruton, 391, U.S. 123(1968) etc. (see Memo for details)
6-9-75	Before COSTANTINO J - case called - motion to suppress - defts and attys present - hearing contd to June 10, 1975 at 10:15 am
6-10-75	Before COSTANTINO J - case called - defts & attys present - hearing on suppression resumed - hearing concluded - motion to suppress is denied.
6-10-75	Before COSTANTINO J - case called - defts & attys present - Trial ordered and BEGUN - Jurors selected and sworn - Trial contd to June 11, 1975 at 11:00 am.
6/11/75	Before COSTANTINO, J. - Case called - Defts and counsel present - Trial resumed - Trial contd to 6/12/75 at 10:00 A.M.



EJB:EL-E:mc  
F.# 741,971

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

VIRGIL P. RIVERS, JR., and  
EDWARD TERRANCE COPELAND,

Defendants.

INDICTMENT

Crim. No. 74 CR 515  
(T. 18, U.S.C., §2113(a)  
(d), §371 and §2)

*Reacher, S*  
*Castantino, S*  
*August 8, 1974*

- - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 15th day of July 1974, within the Eastern District of New York, the defendant VIRGIL P. RIVERS, JR., and the defendant EDWARD TERRANCE COPELAND knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the First National City Bank, 8115 Flatlands Avenue, Brooklyn, New York, approximately Three Thousand Three Hundred Dollars (\$3,300.00), in United States currency, which money was in the care, custody, control, management and possession of the said First National City Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2)

COUNT TWO

On or about the 15th day of July 1974, within the Eastern District of New York, the defendant VIRGIL P. RIVERS, JR., and the defendant EDWARD TERRANCE COPELAND knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the First National City Bank, 8115 Flatlands Avenue, Brooklyn, New York, approximately Three Thousand Three Hundred Dollars (\$3,300.00), in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Deposit

- 2 -

Insurance Corporation and in the commission of this act and offense the defendant VIRGIL P. RIVERS, JR., and the defendant EDWARD TERRANCE COPELAND did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2)

COUNT THREE

On or about the 15th day of July 1974, within the Eastern District of New York, the defendant VIRGIL P. RIVERS, JR., and the defendant EDWARD TERRANCE COPELAND did knowingly and wilfully conspire to commit an offense against the United States in violation of Title 18, United States Code, Section 2113(a)(d), by conspiring to knowingly and wilfully, by force, violence and intimidation, take from the person and presence of employees of the First National City Bank, 8115 Flatlands Avenue, Brooklyn, New York, a quantity of United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation and to assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant VIRGIL P. RIVERS, JR., and the defendant EDWARD TERRANCE COPELAND committed the following:

O V E R T   A C T S

1. On or about July 15, 1974, within the Eastern District of New York, the defendant VIRGIL P. RIVERS, JR., drove a taxicab to the vicinity of the aforementioned bank.
2. On or about July 15, 1974, within the Eastern District of New York, the defendant EDWARD TERRANCE COPELAND

6.

-3-

entered the above-named bank and vaulted over the teller's counter. (Title 18, United States Code, Section 371)

A TRUE BILL.

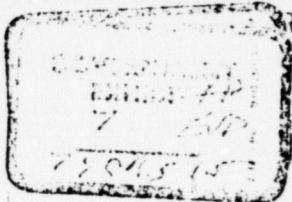
---

FOREMAN

---

UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

## INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place New York, New York  
 Date 7/27/74  
 Time 10:05 PM

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed. Virgil P. Rivers Jr. 7/27/74

Witness: William J. Augustitis, SA, FBI, NY, NY 7/27/74

Witness: P. F. Mitchell, Jr., SA, FBI, NY, NY 7-27-74

Time: 10 10 AM

I, Virgil P. Rivers, Jr. furnish the following free and voluntary statement to William J. Augustitis and P. F. Mitchell, Jr. who have identified themselves to me as Special Agents of the Federal Bureau of Investigation.

I have been advised that I am being questioned

V.P.H.

concerning the July 15, 1974, robbery of the First National City Bank, 8115 Flatlands Avenue, Brooklyn New York. No threats or promises have been made to me to furnish this statement.

I was born November 29, 1947 in New York, New York and have graduated from high school. I can read and write the English language.

On July 15, 1974, I drove a yellow taxi cab belonging to the H&W Cab Corporation to the First National City Bank, 8115 Flatlands Avenue, Brooklyn, New York. I parked the cab near the bank and entered the bank with another person in order to rob it. I carried a sawed-off twenty-two caliber rifle and as I entered the bank I told the customers that it was a stickup and they were to face the tellers counter. I told the tellers to face the back wall of the bank and for all to keep their hands where I could see them. After approximately four minutes in the bank I called time and left the bank. After I left the bank, I drove the cab to the Fort Greene project in Brooklyn, New York, where I discarded the clothes I was wearing and the money from the robbery was split up. My part of the loot was approximately \$1,500.00. I then took the cab back to the garage at 341 Bergen Street, Brooklyn, New York, turned in the money from my driving the

V.P.R.

taking the previous night and left. I have since spent my share of the loot for my heroin habit. The twenty-two caliber sawed-off rifle, I cut it up, put it in a plastic bag and threw it in the East River from the Manhattan Bridge.

I have read the above statement consisting of this page and two other pages and it is true and correct. I have initialed each page and sign my name below.

Virgil P. Rivers Jr. 7/27/74

William J. Augustitis, SA, FBI, NY, NY 7/27/74

P. F. Mitchell Jr., SA, FBI, NY, NY 7/27/74

V.P.R. I, Virgil P. Rivers, Jr. was advised of my rights as they appear on the signed Advice of Rights form. I make the following free and voluntary statement to William J. Augustitis and P. F. Mitchell, Jr. who have identified ~~themselves~~<sup>themselves</sup> to me as Special Agents of the Federal Bureau of Investigation.

I have been advised that I am being questioned concerning the July 15, 1974 robbery of the First National City Bank, 8115 Flatlands Avenue, Brooklyn, New York. No threats or promises have been made to me to furnish this statement.

I was born on November 29, 1947 in New York, New York and have graduated from high school. I can read and write the English language.

V.P.R.

V.P.R.

On July 15, 1974, Terrance Copeland and I robbed the First National City Bank, 8115 Flatlands Avenue, Brooklyn, New York. On the morning of the robbery we drove to the bank in a yellow taxi cab belonging to the H.E.W. Cab Corporation for whom I worked. I parked the taxi near the bank and we entered the bank. I carried a sawed-off twenty-two caliber rifle and Terrance Copeland was unarmed. As we entered the bank I told the customers that it was a stickup and they were to face the teller's counter. I told the tellers to face the back wall of the bank and for all to keep their hands where I could see them. I covered the customers and bank employees while Terrance Copeland vaulted the counter and cleaned out the teller's drawers. After approximately four minutes in the bank, I called time and Terrance Copeland vaulted back over the counter and we left the bank. We drove from the bank in the taxi to the Fort Green projects in Brooklyn, New York, where we discarded our clothes and split up the approximate \$3,000<sup>00</sup> loot. My share was approximately \$1,500<sup>00</sup>. I then took the taxi back to the garage at 341 Bergen Street, Brooklyn, New York, turned in the money from my driving the taxi the previous night and left. I have since spent my share of the loot for my heroin habit. The twenty

V.P.R.

V.P.

two caliber sawed off rifle I cut it up, put it in a plastic bag and threw it in the East River from the Manhattan Bridge.

I have read the above statement consisting of this page and two other pages and it is true and correct. I have initialed each page and each correction and sign my name below.

Virgil P. Rivera Jr. 7/27/74

William J. Augustitis, SA, FBI, NY, NY 7/27/74  
P.J. Mitchell, Jr., SA, FBI, NY, NY 7-27-74

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
THE UNITED STATES :

74-CR-515

v. :

MEMORANDUM DECISION

EDWARD TERRANCE COPELAND :

SEP 19 1974

-----X  
COSTANTINO, D.J.

On September 10, 1974 the court directed that it be provided an F.B.I. report of an interview with the defendant Copeland to determine whether any problems existed with regard to statements of coconspirators, United States v. Bruton, 391 U.S. 123 (1968).

After a review of the F.B.I. report the court holds that no "Bruton" problem exists.

  
U. S. D. J.

13

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
THE UNITED STATES

:  
74-CR-515

v.

:  
MEMORANDUM and ORDER

VIRGIL P. RIVERS, JR. and  
EDWARD TERRANCE COPELAND

:  
-----x

JUN 5 1975

COSTANTINO, D.J.

The court has been furnished with a copy of two confessions of Virgil P. Rivers, Jr. contained in a transcription dated July 29, 1974. After comparing these confessions with the confession of a co-defendant, Edward Terrance Copeland, dated August 5, 1974, the court holds that admitting into evidence Rivers' confessions would not violate United States v. Bruton, 391 U.S. 123 (1968). In reaching this decision, the court relies on the "interlocking confession" doctrine, United States ex rel. Stanbridge v. Zeiker, Docket No. 73-2504, 75-2009 (2d Cir., decided April 15, 1975).

U. S. D. J.

1 find?

2                   The record shouts at you. Convict. The record  
3 shouts at you. There is no reasonable doubt. The  
4 evidence speaks for itself. The last word is yours.  
5 I will leave you with that.

6                   Thank you.

7                   #2 THE COURT: All right, the Court is ready to  
8 deliver its charge.

9                   Mr. Foreman, ladies and gentlemen of the jury:  
10                  We now come to the final stage of the proceedings.  
11                  The Court will now charge you on the law to be applied  
12 to the facts in the case.

13                  As you may recall, I initially gave you a pre-  
14 charge as to the manner in which the case would be  
15 presented to you. I told you that most of the evidence  
16 in the case would come in the form of the testimony  
17 of witnesses, and that you were to pay special atten-  
18 tion to the manner in which the witnesses testified.

19                  I believe I also instructed you that you would  
20 be the judges of the facts in the case, that being  
21 your sole province; and that your recollection of the  
22 facts after having heard all of the evidence in the  
23 case -- the testimony of witnesses and the documentary  
24 proof -- was to control the determination of the issues.

25                  Likewise at that time I told you that I would

be the judge of the law. This has not changed at this stage of the proceedings. I will not review the facts in this case with you because I am certain that with summations by the attorneys there is no need for the Court to review the facts.

In any event, if you find that there is some fact in the case that you may have forgotten or don't recollect, or you can't agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure, refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

Now, the attorneys have been permitted by the Court and by the rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence. However, the Court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments. And if you agree with what they have said on either side of the case you may use those arguments in your deliberations and in discussing the case with each other. And try to convince one another as to what the final determination shall be

## 1                   Charge of the Court

2                   with reference to the deliberations at hand.

3                   If you feel that the arguments are not commen-  
4                   surate with the testimony and the proof in the case,  
5                   you may disregard them. The arguments are not evidence.  
6                   You need not weigh them. However, there are times  
7                   when the arguments of the attorneys will give you an  
8                   insight as to something you may have missed, and you  
9                   may discuss that portion of it if you so desire.

10                  Now, of course, I also said to you that during  
11                  the trial the Court will be the judge of the law.  
12                  Likewise, as to motions which at times we had at a  
13                  sidebar, as you may recall, that was not for the pur-  
14                  pose of keeping any of the proof from you, but were  
15                  matters of law that were discussed between the attorneys  
16                  and the Court itself and should not have come before  
17                  you. In any event, if you feel that you have discovered  
18                  by some stretch of your imagination what this Court  
19                  thinks as to either some of the testimony or the case  
20                  itself, you should remove that from your mind because  
21                  I tell you here and now I have come to no conclusion  
22                  in this case nor have I indicated to you in any way  
23                  whatsoever what my feeling is with reference to the  
24                  facts in the case or with reference to the guilt or  
25                  innocence of the defendants. That is your province and

## 1                   Charge of the Court

2                   your job. You should not try to weigh what you be-  
3                   lieve the Court's impression may be.

4                   You must understand that the lawyers who appear  
5                   before you are advocates. They are advocating the  
6                   best case they can for the party they represent and  
7                   they have a right to exercise as much forcefulness  
8                   as they desire in their questioning or otherwise in  
9                   presenting their case.

10

11                   (Continued on next page.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
DS:GA  
T3R1PM 2

3 THE COURT: (continuing) I say this, because  
this is within the framework of the ordinary trial.

4 You have been chosen and Sworn as jurors in this  
5 case to try the issues of fact presented by the allega-  
6 tions of the Indictment, and the denial made by the Not  
7 Guilty plea of the accused. You are to perform this  
8 duty without bias or prejudice as to any party. The  
9 law does not permit jurors to be governed by sympathy,  
10 prejudice or bias. Both the accused and the public expect  
11 that you will carefully and impartially consider all  
12 the evidence in the case, follow the law as stated by  
13 the Court, and reach a just verdict, regardless of the  
14 consequences.

15 During my preCharge, I told you, among other  
16 things, that the questions asked by the attorneys are  
17 never to be considered as evidence, even though the  
18 question may contain a statement of evidence. You are  
19 reminded that only the answer to the question is evidence  
20 if, of course, the question was answered.

21 Of course you know by this time that this case  
22 has come before you by way of an Indictment presented by  
23 a Grand Jury, sitting in this Eastern District. That  
24 Indictment charges the defendants with three Counts I  
25 shall now read to you. Remember, the Indictment is merely

## 2 1 Charge of the Court

457

2 an accusation, merely a piece of paper. It is not evi-  
3 dence, and is not proof of anything.

## 4 COUNT ONE

5 On or about the 15th day of July, 1974, within  
6 the Eastern District of New York, the defendant VIRGIL  
7 P. RIVERS, and the defendant EDWARD TERRENCE COPELAND,  
8 knowingly and willfully, by force, violence and intimida-  
9 tion, did take from the person and presence of employees  
10 of the First National City Bank, 8115 Flatlands Avenue,  
11 Brooklyn, New York, approximately three thousand, three  
12 hundred dollars, (\$3,300.00), in United States currency,  
13 which money was in the care, custody, control, manage-  
14 ment and possession of the said First National City Bank,  
15 the deposits of which bank were then and there insured  
16 by the Federal Deposit Insurance Corporation (Title 18,  
17 United States Code, Section 2013(a), and Section 2).

## 18 COUNT TWO

19 On or about the 15th day of July, 1974, within  
20 the Eastern District of New York, the defendant VIRGIL  
21 P. RIVERS, JR., and the defendant EDWARD TERRENCE COPELAND,  
22 knowingly and willfully, by force, violence and intimida-  
23 tion, did take from the person and presence of employees  
24 of the First National City Bank, 8115 Flatlands Avenue,  
25 Brooklyn, New York, approximately three thousand, three

1 hundred dollars (\$3,300.00), in United States currency,  
2 which money was in the care, custody, control, manage-  
3 ment and possession of the said bank, the deposits of  
4 which bank were then and there insured by the Federal  
5 Deposit Insurance Corporation, and in the commission  
6 of this act and offense, the defendant VIRGIL P. RIVERS,  
7 JR., and the defendant EDWARD TERRENCE COPELAND, did  
8 assault and place in jeopardy the lives of the said bank  
9 employees, as well as the lives of other persons present,  
10 by the use of a dangerous weapon (Title 18, United States  
11 Code, Section 2113(d) and Section 2).

12

## COUNT THREE

13

14 On or about the 15th day of July, 1974, within  
15 the Eastern District of New York, the defendant VIRGIL  
16 P. RIVERS, JR., and the defendant EDWARD TERRENCE COPELAND  
17 did knowingly and willfully conspire to commit an offense  
18 against the United States in violation of Title 18,  
19 United States Code, Section 2113(a)(d) by conspiring to  
20 knowingly and willfully, by force, violence and intimida-  
21 tion, take from the person and presence of employees of  
22 the First National City Bank, 8115 Flatlands Avenue,  
23 Brooklyn, New York, a quantity of United States currency,  
24 which money was in the care, custody, control, manage-  
25 ment and possession of the said bank, the deposits of

2 which were, then and there insured by the Federal Deposit  
3 Insurance Corporation, and to assault and place in  
4 jeopardy the lives of the said bank employees, as well  
5 as the lives of other persons present by the use of a  
6 dangerous weapon.

7 In furtherance of the said unlawful Conspiracy,  
8 and for the purpose of effecting the objectives thereof,  
9 the defendant VIRGIL P. RIVERS, JR., and the defendant  
10 EDWARD TERRENCE COPELAND, committed the following:

11   OVERT ACTS

12   1. On or about July 15, 1974, within the Eastern  
13 District of New York, the defendant VIRGIL P. RIVERS, JR.,  
14 drove a taxicab to the vicinity of the aforementioned  
15 bank.

16   2. On or about July 15, 1974, within the Eastern  
17 District of New York, the defendant EDWARD TERRENCE  
18 COPELAND, entered the above-named bank and vaulted over  
19 the tellers' counter.

20   This is under Section 371 of the United States  
21 Code, Title 18. The Count I just read to you is known  
22 as the Conspiracy Count.

23   Count One charges a violation of Title 18, United  
24 States Code, Section 2113(a) and Section 2.

25   Section 2113(a) of Title 18 of the United States

2                   Code reads in pertinent part as follows -- and at this  
3                   point you will receive a copy of the Indictment to read  
4                   while you are deliberating:

5                   Whoever, by force or violence, or by intimida-  
6                   tion, takes, or attempts to take, from the person or  
7                   presence of another, any property or money or any other  
8                   thing of value belonging to, or in the care, custody,  
9                   control, management, or possession of any bank, is guilty  
10                  of a crime.

11                  Section 2 of the Title 18 of the United States  
12                  Code is known as the Aider and Abettor Section, and  
13                  reads as follows:

14                  (a) Whoever commits an offense against the United  
15                  States or aids, abets, counsels, commands, induces or  
16                  procures its commission, is punishable as a principal.

17                  (b) Whoever willfully causes an act to be done  
18                  which if directly performed by him or another would be  
19                  an offense against the United States, is punishable as  
20                  a principal, which means, as they aid and abet each other,  
21                  one does not become an agent and the other one a princi-  
22                  pal, both become principals.

23                  Count Two charges violation of Title 18, United  
24                  States Code, Section 2113(d) and Section 2.

25                  The pertinent part reads as follows:

Whoever, in committing, or in attempting to commit any offense defined in subsection (a), which I have just read to you, this Section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be guilty of a crime.

So that distinguishes Count One from Count Two.

Count Three charges violation of Title 18, United States Code, Section 371, the Conspiracy Count.

The pertinent section of law provides in part that:

"If two or more persons conspire . . . to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the Conspiracy, each is guilty of an offense against the United States."

The crime charged in Count One of the Indictment requires that the Government prove beyond a reasonable doubt:

(1) The act or acts of taking from the person or presence of another, money belonging to or in the care, custody, control, management, or possession of a bank, as charged; and

(2) "the act or acts of taking such money by force

or violence, or by means of intimidation; and

(3) That such acts were done by each of the defendants knowingly and willfully.

Section 2113(f) defines the term "bank" to mean, "any member bank of the Federal Reserve System, and any . . . banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation."

It is stipulated or agreed that the First National City Bank is a banking institution organized and operating under the laws of the United States, and a member bank of the Federal Reserve System, and a bank the deposits of which were insured by the Federal Deposit Insurance Corporation, at the time of the offense alleged in the Indictment. So you need not determine the issue of whether it was a Federal bank, or whether it was Federal Reserve, or whether it was FDIC insured. It is conceded and stipulated to.

The law recognizes two kinds of possession:  
Actual possession and Constructive possession. A person  
who knowingly has direct physical control over a thing,  
at a given time, is then in actual possession of it.  
For instance, my holding of this glass in my hand is

actual possession of the glass at this time, since I have it physically within my possession.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

If you should find beyond a reasonable doubt from the evidence in the case, at the time and place of the alleged offense, the First National Bank, either alone or jointly with others, had actual or constructive possession of the money described in the indictment, then you may find that such money was in the possession of the First National Bank within the meaning of the word "possession," as used in these instructions, and as set forth in the statute.

To take or attempt to take, "by intimidation," means willfully to take, or attempt to take, by putting in fear of bodily harm. Such fear must arise from the

## 9 1 Charge of the Court

464

2 willful conduct of the accused, rather than from some  
3 mere temperamental timidity of the victim; however, the  
4 fear of the victim need not be so great as to result in  
5 terror, panic, or hysteria.

6 A taking, or an attempted taking, "by intimidi-  
7 tion," must be established by proof of one or more acts  
8 or statements of the accused, which were done or made  
9 in such a manner, and under such circumstances, as would  
10 produce in the ordinary person fear of bodily harm.

11 However, actual fear need not be proved. Fear,  
12 like intent, may be inferred from statements made and  
13 acts done or omitted by the accused, and by the victim  
14 as well; and from all the surrounding circumstances  
15 shown by the evidence in the case.

16 In order to aid and abet another to commit a  
17 crime, it is necessary that an accused willfully associ-  
18 ate himself in some way with the criminal venture, and  
19 willfully participate in it as he would in something he  
20 wishes to bring about; that is to say, that he willfully  
21 seeks by some act or omission of his, to make the criminal  
22 venture succeed.

23 An act or omission is "willfully" done, if done  
24 voluntarily and intentionally, and with the specific  
25 intent to do something the law forbids, or with the

2 specific intent to fail to do something the law requires  
3 to be done; that is to say, with bad purpose, either to  
4 disobey or to disregard the law.

5 You, of course, may not find a defendant guilty  
6 unless you find beyond a reasonable doubt that every  
7 element of these offense as defined in these instructions  
8 was committed by some person or persons, and that the  
9 defendant participated in its commission.

10

R2 f1s

11 (continued on next page.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

3/2

## 1                   Charge of the Court

2                   The crime charged in Count 2 of the indictment  
3                   requires that the Government prove beyond a  
4                   reasonable doubt four essential elements:

5                   1. The act or acts of taking, from the  
6                   person and presence of another, money belonging to  
7                   or in the care, custody, control, management or  
8                   possession of a bank, as charged;

9                   2. The act or acts of taking such money  
10                  by force or violence, or by means of intimidation;

11                  3. The act or acts of assaulting and of  
12                  putting in jeopardy the life of any person by the  
13                  use of a dangerous weapon or device, while engaged  
14                  in stealing such money from the bank, as charged,  
15                  and

16                  4. Doing such act or acts knowingly and  
17                  willfully.

18                  If the jury should find beyond a reasonable  
19                  doubt from the evidence in the case that the accused  
20                  did willfully commit robbery of the bank, as  
21                  charged, then the jury must proceed to determine  
22                  whether the evidence in the case establishes that  
23                  the accused, in committing robbery of the bank,  
24                  assaulted or put in jeopardy the lives of several  
25                  of the employees of the bank, as charged in the

1  
2                   Charge of the Court  
3

4                   indictment.

5                   Any willful attempt or threat to inflict in-  
6                   jury upon the person of another, when coupled with  
7                   an apparent present ability to do so, or any inten-  
8                   tional display of force such as would give the victim  
9                   reason to feel or expect immediate bodily harm,  
10                  constitutes an assault. An assault may be committed  
11                  without actually touching, or striking, or doing  
12                  bodily harm to the person of another.13                  So, a person who has the apparent present  
14                  ability to inflict bodily harm or injury upon another  
15                  person, and willfully attempts or even threatens to  
16                  inflict such bodily harm, as by intentionally flour-  
17                  ishing or pointing a pistol or gun at another person,  
18                  may be found to have assaulted such person.19                  A "dangerous weapon" includes anything capable  
20                  of being readily operated, manipulated, wielded, or  
21                  otherwise used by one or more persons to inflict  
22                  severe bodily harm or injury upon another person.  
23                  So, an operable firearm, such as a pistol, revolver,  
24                  or other "gun", capable of firing a bullet or  
25                  "ammunition," may be found to be a dangerous weapon  
                        or device.

To "put in jeopardy the life" of a person "by

1                   Charge of the Court  
2

3                   the use of a dangerous weapon" means, then, to expose  
4                   such person to a risk of death, or to the fear of  
5                   death, by the use of such dangerous weapon.

6                   The jury may infer that a gun used during a  
7                   robbery was loaded in the absence of direct proof  
8                   that the chambers contained bullets.

9                   A conspiracy is a combination of two or more  
10                  persons, by concerted action, to accomplish some  
11                  unlawful purpose, or to accomplish some lawful  
12                  purpose by unlawful means. We are talking about  
13                  Count 3. So, a conspiracy is a kind of "partnership  
14                  in criminal purposes," in which each member becomes  
15                  the agent of every other member. The gist of the  
16                  offence is a combination or agreement to disobey,  
17                  or to disregard, the law.

18                  Mere similarity of conduct among various  
19                  persons, and the fact they may have associated with  
20                  each other, and may have assembled together and dis-  
21                  cussed common aims and interests, does not necessarily  
22                  establish proof of the existence of a conspiracy.

23                  However, the evidence in the case need not  
24                  show that the members entered into any express or  
25                  formal agreement, or that they directly, by words

1                    Charge of the Court  
2

3                    spoken or in writing, stated between themselves what  
4                    their object or purpose was to be, or the details  
5                    thereof, or the means by which the object or purpose  
6                    was to be accomplished. What the evidence in the  
7                    case must show beyond a reasonable doubt, in order  
8                    to establish proof that a conspiracy existed, is  
9                    that the members in some way or manner, or through  
10                  some contrivance, expressly or tacitly came to a  
11                  mutual understanding to try to accomplish an unlawful  
12                  plan.

13                  The evidence in the case need not establish  
14                  that all the means or methods set forth in the in-  
15                  dictment were agreed upon to carry out the alleged  
16                  conspiracy; nor that all means or methods, which  
17                  were agreed upon, were actually used or put into  
18                  operation; nor that all of the persons charged to  
19                  have been members of the alleged conspiracy were  
20                  such. What the evidence in the case must establish  
21                  beyond a reasonable doubt is that the alleged con-  
22                  spiracy was knowingly formed, and that one or more  
23                  of the means or methods described in the indictment  
24                  were agreed upon to be used, in an effort to effect  
25                  or accomplish some object or purpose of the con-  
                      spiracy, as charged in the indictment; and that two

5

## 1                   Charge of the Court

2                   or more persons, including one or more of the accused,  
3                   were knowingly members of the conspiracy, as charged  
4                   in the indictment.

5                   One may become a member of a conspiracy with-  
6                   out full knowledge of all the details of the conspiracy.  
7                   On the other hand, a person who has no knowledge of  
8                   a conspiracy, but happens to act in a way which  
9                   furthers some object or purpose of the conspiracy,  
10                  does not thereby become a conspirator.

11                  Before the jury may find that a defendant, or  
12                  any other person, has become a member of a conspiracy,  
13                  the evidence in the case must show beyond a reasonable  
14                  doubt that the conspiracy was knowingly formed, and  
15                  that the defendant, or other person who is claimed  
16                  to have been a member, willfully participated in the  
17                  unlawful plan, with the intent to advance or further  
18                  some object or purpose of the conspiracy.

19                  To act or participate willfully means to act  
20                  or participate voluntarily and intentionally, and  
21                  with specific intent to do something the law forbids,  
22                  that is to say, to act or participate with the bad  
23                  purpose either to disobey or to disregard the law.  
24                  So, if a defendant, or any other person, with  
25                  understanding of the unlawful character or plan,

## 1                   Charge of the Court

6

2                   knowingly encourages, advises or assists, for the  
3                   purpose of furthering the undertaking or scheme, he  
4                   thereby becomes a willful participant -- a con-  
5                   spirator.

6

7                   One who willfully joins an existing conspiracy  
8                   is charged with the same responsibility as if he had  
9                   been one of the originators or instigators of the  
10                  conspiracy.

10

11                  In determining whether a conspiracy existed,  
12                  the jury should consider the actions and declara-  
13                  tions of all of the alleged participants. However,  
14                  in determining whether a particular defendant was  
15                  a member of the conspiracy, the jury should consider  
16                  only his acts and statements. He cannot be bound  
17                  by the acts or declarations of other participants  
18                  until it is established that a conspiracy existed,  
19                  and that he was one of its members.

19

20                  Four essential elements are required to be  
21                  proved in order to establish the offense of con-  
22                  spiracy charged in the indictment:

22

23                  First: That the conspiracy described in the  
24                  indictment was willfully formed, and was existing  
25                  at or about the time alleged;

25

Second: That the accused willfully became

### Charge of the Court

a member of the conspiracy;

Third: That one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment, at or about the time or place alleged; and

Fourth: Such overt act was knowingly done  
in furtherance of some object or purpose of the  
conspiracy, as charged.

If the jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete; and it is complete as to every person found by the jury to have been willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

As I stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

8

## Charge of the Court

The crimes charged in this case are serious crimes which require proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent, the Government must prove that a defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statement made and act done by the defendant, and all of the facts and circumstances in evidence which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

### Charge of the Court

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

An act is done "willfully" if done voluntarily and intentionally, and with specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

You may hear me sometimes refer to direct evidence and to circumstantial evidence, and it is well to explain now these two types of evidence.

Direct evidence is where a witness testified to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

10

Charge of the Court

1  
2 Circumstantial evidence, if believed, is of  
3 no less value than direct evidence for in either  
4 case you must be convinced beyond a reasonable doubt  
5 of the guilt of a defendant.

6 A defendant is presumed innocent of the crime.  
7 Thus the defendant, although accused, begins the  
8 trial with a clean slate and with no evidence against  
9 him, and the law permits nothing but legal evidence  
10 to be presented before a jury to be considered in  
11 support of any charge against the accused. So the  
12 presumption of innocence alone is sufficient to  
13 acquit a defendant unless you, the jury, are satisfied  
14 beyond a reasonable doubt of the defendant's guilt  
15 after careful and impartial consideration of all  
16 the evidence in the case.

17 It is not required that the Government prove  
18 guilt beyond all possible doubt. The test is one  
19 of reasonable doubt, and reasonable doubt is based  
20 upon reason and common sense, the kind of doubt  
21 that would make a reasonable person hesitate to act.  
22 Proof beyond a reasonable doubt must, therefore,  
23 be proof of such a convincing character that you  
24 would be willing to rely and act upon it unhesitatingly  
25 in the most important of your own affairs.

11

## Charge of the Court

You, the jury, will remember that the defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the failure of the defendant to testify. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

If the jury views the evidence in the case as reasonably permitting either of two conclusions, one of innocence, the other of guilt, you, the jury, should, of course, adopt the conclusion of innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of the fact, such as an eye witness. Also circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury, may make common sense inferences

12

## Charge of the Court

1 from the proven facts.

2  
3 It is not necessary that all inferences drawn  
4 from the facts in evidence be consistent only with  
5 guilt, and inconsistent with every reasonable hypothesis  
6 of innocence. The test is one of reasonable doubt,  
7 and should be based upon all the evidence, the testi-  
8 mony of the witnesses, the documents offered into evi-  
9 dence, and the reasonable inferences which can be  
10 drawn from the proven facts.

11 An inference is a deduction or conclusion which  
12 reason and common sense lead the jury to draw from  
13 the facts which have been proved. You are to consider  
14 only the evidence in the case. But in your considera-  
15 tion of the evidence, you are not limited to the bald  
16 statements of the witnesses. On the contrary, you  
17 are permitted to draw, from the fact which you find  
18 have been proved, such reasonable inferences as seem  
19 justified in the light of your own experience.

20 Reasonable doubt may arise not only from the  
21 evidence produced, but also from a lack of evidence.  
22 Since the burden is upon the prosecution to prove the  
23 accused guilty beyond a reasonable doubt of every  
24 essential element of the crime charged, a defendant  
25 has the right to rely upon failure of the prosecution

13

## Charge of the Court

1 to establish such proof.

2  
3 The law does not require the prosecution to  
4 call as witnesses all persons who may have been pre-  
5 sent at any time or place involved in the case, or who  
6 may appear to have some knowledge of the matters in  
7 issue at this trial. Nor does the law require the  
8 prosecution to produce as Exhibits all papers and  
9 things mentioned in the evidence.

10 However, in judging the credibility of the  
11 witnesses who have testified, and considering the  
12 weight and effect of all evidence that has been pro-  
13 duced, the jury may consider the prosecution's failure  
14 to call other witnesses, or to produce other evidence,  
15 as shown by the evidence in the case to be in exist-  
16 ence and available.

17 The jury will always bear in mind that the law  
18 never imposes upon the defendant in a criminal case  
19 the burden or duty of calling any witnesses or produc-  
20 ing any evidence, and no adverse inference may be  
21 drawn from his failure to do so.

HS fls

22 (continued on next page.)

23

24

25

1  
HS:GA  
2  
T4R1PM

3 Charge of the Court

4 THE COURT: (continuing) If you find beyond a  
5 reasonable doubt that the admissions were made voluntar-  
6 iily, then I charge you that admissions of the defendant  
7 are among the most effectual proofs in the law, and con-  
8 stitutes the strongest evidence against the party making  
9 it that can be given of the facts stated in the admis-  
sions. Accordingly, you are entitled to give great  
weight to the defendants' admissions in this case.

10 You, as jurors, are the sole judges of the cred-  
11 ibility of the witnesses and the weight their testimony  
12 deserves, and it goes without saying that you should  
13 scrutinize all the testimony given, the circumstances  
14 under which each witness has testified, and every matter  
15 in evidence which tends to show whether a witness is  
16 worthy of belief. Consider each witness' intelligence,  
17 motive and state of mind, and his demeanor and manner  
18 while on the stand. Consider the witness' ability to  
19 observe the matters as to which he has testified, and  
20 whether he impresses you as having an accurate recollec-  
21 tion of these matters.

22 Consider also any relation each witness may bear  
23 to either side of the case; the manner in which each  
24 witness might be affected by the verdict; and the extent  
25 to which, if at all, each witness is either supported or

2

### **Charge of the Court**

contradicted by other evidence in the case.

Inconsistencies, or discrepancies, in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and an incident misrecollection, like the failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

14 After making your own judgment, you will give the  
15 testimony of each witness such credibility, if any, as  
16 you may think it deserves.

17 Every witness' testimony must be weighed as to  
18 its truthfulness. If you find any witness lied as to  
19 any material fact in the case, then the law gives you  
20 certain privileges. One of those privileges is that  
21 you have the right to disregard the entire testimony of  
22 that witness. If you find, however, that you can sift  
23 through that testimony and determine which of the testi-  
24 mony is true and which is false, then the law allows you  
25 to take the portions which were true, and weigh it, and

3 1

## Charge of the Court

2 disregard those portions which were false. That again  
3 is within your prerogative.

4 The weight of the evidence is not necessarily de-  
5 termined by the number of witnesses testifying on either  
6 side. You should consider all the facts and circumstances  
7 in evidence to determine which of the witnesses are  
8 worthy of greater credence. You may find that the  
9 testimony of a smaller number of witnesses on one side  
10 is more credible than the testimony of a greater number  
11 of witnesses on the other side. You are not obliged to  
12 accept testimony, even though the testimony is uncontra-  
13 dicted, and the witness is not impeached. You may decide,  
14 because of the witness' bearing and demeanor, or because  
15 of the inherent improbability of his testimony, or for  
16 other reasons sufficient to you, that such testimony is  
17 not worthy of belief.

18 The Government is not required to prove the  
19 essential elements of the offense as defined in these  
20 instructions by any particular number of witnesses.  
21 The testimony of a single witness may be sufficient to  
22 convince you beyond a reasonable doubt of the existence  
23 of an essential element of the offense charged, if you  
24 believe beyond a reasonable doubt that the witness is  
25 telling the truth.

1  
2 Identification testimony is an expression of  
3 belief or impression by the witness. Its value depends  
4 on the opportunity the witness had to observe the offender  
5 at the time of the offense, and to make a reliable identi-  
6 fication later.

7 In appraising the identification testimony of a  
8 witness, you should consider the following:

9 Are you convinced that the witness had the capacity  
10 and an adequate opportunity to observe the offender?

11 Whether the witness had an adequate opportunity  
12 to observe the offender at the time of the offense will  
13 be affected by such matters as how long or short a time  
14 was available, how far or close the witness was, how  
15 good were lighting conditions, whether the witness had  
16 had occasion to see or know the person in the past.

17 Are you satisfied that the identification made  
18 by the witness subsequent to the offense was the product  
19 of his own recollection? You may take into account both  
20 the strength of the identification, and the circumstances  
21 under which the identification was made.

22 If the identification by the witness may have  
23 been influenced by the circumstances under which the  
24 defendant was presented to him for identification, you  
25 should scrutinize the identification with great care.

1            You may also consider the length of time that  
2            lapsed between the occurrence of the crime and the next  
3            opportunity of the witness to see defendants, as a factor  
4            bearing on the reliability of the identification.  
5

6            Finally, you must consider the credibility of each  
7            identification witness in the same way as any other wit-  
8            ness, consider whether he is truthful, and consider  
9            whether he had the capacity and opportunity to make a  
10           reliable observation on the matter covered in the testi-  
11           mony.

12           I again emphasize that the burden of proof on  
13           the prosecutor extends to every element of the crime  
14           charged, and this specifically includes the burden of  
15           proving beyond a reasonable doubt the identify of the  
16           defendant as the perpetrator of the crime with which he  
17           stands charged. If, after examining the testimony, you  
18           have a reasonable doubt as to the accuracy of the identi-  
19           fication, you must find the defendant not guilty.  
20

21           There is nothing peculiarly different in the way  
22           a jury should consider the evidence in a criminal case  
23           from that in which all reasonable persons treat any ques-  
24           tion, depending upon the evidence presented to them.  
25           You are expected to use your good sense; consider the  
              evidence in the case for only those purposes for which

it has been admitted, and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond reasonable doubt, say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a violation of your Sworn duty to base a verdict of guilty upon anything other than the evidence in the case; and remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is your duty to give separate, personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants. Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct, and any other evidence in the case which may be applicable to him.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control

## Charge of the Court

1 during your deliberations.

2  
3 The punishment provided by law for the offense  
4 charged in the indictment is a matter exclusively within  
5 the province of the Court, and should never be considered  
6 by the jury in any way in arriving at an impartial ver-  
7 dict as to the guilt or innocence of the accused.

8 I am not sending the Exhibits which have been  
9 received in evidence with you as you retire for your  
10 deliberations. You are entitled, however, to see any  
11 or all of those Exhibits as you consider your verdict.  
12 I suggest that you begin your deliberations, and then,  
13 if it would be helpful to you, you may ask for any or  
14 all of the Exhibits, simply by sending a note to me  
15 through one of the Bailiffs.

16 Now, in this type of case there must be a unanimous  
17 verdict. That means all twelve of you must agree, and  
18 it goes without saying that it becomes incumbent upon  
19 you to listen to one another and to argue out the points  
20 among yourselves in order to determine in good conscience  
21 whether your fellow jurors' argument is one commensurate  
22 with yours, or whether at least you can with good con-  
23 science agree with him. You have no right to stubbornly  
24 and idly sit by and say, "I am not talking to anyone.  
25 I am not going to discuss it," because people with

1 common sense and the ability to reason must communicate.  
2 they must communicate their thoughts. So, anything  
3 which appears in the record, and about which one of you  
4 may not agree, talk it out amongst yourselves, and then  
5 if you cannot agree as to what is in the record, you  
6 can then ask the Court to have that portion of the  
7 testimony read back to you. You may do so by knocking  
8 on the door and giving a note in writing to the Clerk,  
9 who will then present it to the Court, and I will then  
10 bring you into the courtroom.  
11

12 You, Mr. Foreman, will preside over the delibera-  
13 tions, and will be the spokesman here in court. The  
14 form of your verdict will be -- There are three Counts  
15 in the Indictment -- If you find the defendant Not Guilty  
16 as to all three Counts, then, of course, you would announce  
17 your verdict as, "We, the jury, find the defendant not  
18 guilty."

19 If you should find the defendant guilty as to  
20 all three Counts, then you would announce that, "We,  
21 the jury, find the defendant guilty as to all three  
22 Counts."

23 If you should find one defendant guilty as to  
24 one Count, and not guilty as to another, then that would  
25 be a separate form of verdict. You would announce as to

which defendant you find guilty, and as to which defendant you find not guilty. Each one of those would be then announced in court at the time you have concluded your deliberations.

6 That is the Court's Charge. You may not retire  
7 to begin your deliberations.

As to the two Alternates, the Court thanks you  
for your participation in the case. If you have any  
coats or any handbags, you may get them.

(Alternate Jurors leave courtroom.)

12 THE COURT: Would the Marshals step forward to  
13 be Sworn.

14 (Marshals Sworn.)

THE COURT: You may now follow the Marshal.

(Jury leaves courtroom.)

17 THE COURT: I assume that all Exhibits in evidence  
18 are here?

MR. LEVIN-EPSTEIN: Yes, your Honor.

HS fls w/<sup>20</sup>  
More if <sup>21</sup>  
anything

(continued on next page.)

I hereby certify that the foregoing is a  
true and accurate transcript from my sten-  
ographic notes in this proceeding.  
*Henry K. Shapira*

*Henry R.*  
Official Court Reporter  
U.S. District Court for the  
Eastern District of N.Y.

